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Yoichi Kakudo

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EXAMINER

MOORE, WALTER A

ART UNIT

PAPER NUMBER

1783

NOTIFICATION DATE

DELIVERY MODE

07/22/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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### **CONTINUATION SHEET**

Continuation of 11. The request for reconsideration has been considered, but does not place the application in condition for allowance because:

It remains the Examiner's position that the claims are unpatentable for the reasons of record in the final office action and given below.

#### ***Response to Arguments***

Applicant's arguments filed 7/13/2010 have been fully considered but they are not persuasive.

Applicant argues claim interpretation is not consistent with the specification (Remarks, p. 2, para 1). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." Furthermore, broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. MPEP 2111. Here the claim claims "a ratio". The claims do not claim the ratio of either A:B or B:A. The limitation "a ratio" absent any other language does not limit the claim interpretation to either A:B or B:A.

Applicant argues the Office's formula to calculate the ratio is unsupported. Examiner is not persuaded by this argument for the reasons given in the final office action.

Applicant asserts a skilled artisan would have understood the claimed ratio means  $CaVa:CbVb$  (Remarks, p. 2, para 2). As stated in the final office action, the phrase "alcohol content" is not defined by the specification to mean concentration multiplied by volume. Therefore, the claim does not limit the meaning of alcohol content to the exemplary formulation in the Specification. Furthermore, the present claim language does not necessarily claim the ratio of alcohol contents is  $CaVa:CbVb$ .

Applicant asserts a skilled artisan would have understood that "'a ratio between X and Y' refers to 'X/Y'". As discussed above, the limitation "a ratio" absent any other language does not limit the claim interpretation to either  $X:Y$  or  $Y:X$ .

Applicant argues the claim interpretation is not consistent with Table 1 (Remarks, p. 2, last para to p.3). As discussed above, the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. The present claim language can be interpreted in at least two ways. One way is the Applicant's interpretation. The Examiner's interpretation is an example of another interpretation. In other words, the present claim language does not necessarily claim the embodiments listed in the Specification, Table 1.

Applicant's extends the alcohol content ratio argument to the rejections over Hoppy in view of Shinozaki or Japan Alcoholic Beverages (Remarks, p. 4). The Examiner is not persuaded by these argument for the reasons discussed above.

Applicant argues the claimed beverage has unexpected properties (Remarks, p. 5, first full para). Applicant argues that Hoppy does not disclose a crisp taste or robust feel (Remarks, p.

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11, last paragraph). Examiner is not persuaded by this argument. First, “crisp taste or robust feel” is not claimed. Second, “crisp taste or robust feel” is subjective. The Specification fails to indicate an objective means to repeat the evaluation by “eight special panelists”. Third, the arguments of counsel cannot take place of evidence on the record. It is the examiner's position the lack of “crisp taste or robust feel” in Hoppy must be supported by evidence.

Applicant asserts the claimed combination of components results in “unexpected” properties (Remarks, p. 5, first full para). As set forth in MPEP 716.02(d), whether unexpected results are the result of unexpectedly improved results or a property not taught by the prior art, “objective evidence of nonobviousness must be commensurate in scope with the claims which the evidence is offered to support”. In other words, the showing of unexpected results must be reviewed to see if the results occurred over the entire claimed range, *In re Clemens*, 622 F.2d 1029, 1036, 206 USPQ 289, 296 (CCPA 1980). Applicants have not provided data to show that the unexpected results do in fact occur over the entire claimed range of alcohol content. The specification reports crispness and robust feel (Specification, Table 1). However, the specification indicates that ratios outside the claimed range have between normal and strong crispness, as well as between normal and sufficiently strong robustness (Specification, p. 13, Table 1). Therefore, there is no evidence on the record that the claimed range of alcohol content results in unexpected properties.

Applicant relies on the arguments discussed above for the rejections of claims 7-8 as obvious over Carbomb in view of Tripp (Remarks, p. 5-6) and claims 7-8 and 17-18 as obvious over Hoppy in view of Shinozaki or Japan Alcoholic Beverages (Remarks, p. 6).

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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to WALTER MOORE whose telephone number is (571) 270-7372. The examiner can normally be reached on Monday-Thursday 9:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/WM/  
Walter Moore, Examiner AU 1783  
7/16/2010

/David R. Sample/  
Supervisory Patent Examiner, Art Unit 1783